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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

YVETTE FELARCA, Petitioner and Appellant, v. TROY WORDEN, Defendant and Appellant.	A153633 (Alameda County Super. Ct. No. RG17874412)

Yvette Felarca, who describes herself as a "public political leader against racism and for immigrant rights," accused U.C. Berkeley student Troy Worden of stalking and harassing her while she engaged in political action on the Berkeley campus. Felarca sought a civil harassment restraining order against Worden (Civ. Proc. Code § 527.6),[1] but she filed a request for voluntary dismissal before the court ruled on the merits of her petition. Thereafter, Worden filed a motion for an award of attorney's fees under section 527.6, subdivision (s) and for sanctions under section 128.5, requesting fees and costs totaling $181,013.63. The trial court denied the sanctions motion but awarded Worden $11,100 in attorney's fees and costs. Both parties appeal. We affirm.

STATUTORY FRAMEWORK

Section 527.6 was enacted " 'to protect the individual's right to pursue safety, happiness and privacy' " by "providing expedited injunctive relief to victims of

[1] Statutory references are to the Code of Civil Procedure, unless otherwise indicated.

harassment." (*Brekke v. Wills* (2005) 125 Cal.App.4th 1400, 1412; see also *Duronslet v. Kamps* (2012) 203 Cal.App.4th 717, 724.) To secure relief under this statute, the alleged victim may file a petition for an injunction prohibiting harassment (§ 527.6, subd. (a)) and obtain a temporary restraining order (TRO) "with or without notice, based on a declaration that, to the satisfaction of the court, shows reasonable proof of harassment of the petitioner by the respondent, and that great or irreparable harm would result to the petitioner" (§ 527.6, subd. (d)).

Harassment is defined in section 527.6 as "unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose." (§ 527.6, subd. (b)(3).) A " '[c]redible threat of violence' " is a "knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety," or the safety of his or her immediate family, and that serves no legitimate purpose. (§ 527.6, subd. (b)(2).) " 'Course of conduct' " is defined as a "pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose," including following an individual, making harassing calls, or sending harassing correspondence. (§ 527.6, subd. (b)(1).) To constitute harassment, the "course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner." (§ 527.6, subd. (b)(3).)

A hearing on the petitioner's request for an injunction must be held within 21 days following issuance of a TRO, or within 25 days upon a finding of good cause. (§ 527.6, subd. (f)–(g).) At the hearing, the court "shall" receive "relevant" testimony and "may make an independent inquiry." (§ 527.6, subd. (i).) "If the judge finds by clear and convincing evidence that unlawful harassment exists, an order shall issue prohibiting the harassment." (*Ibid*.) Section 527.6, subdivision (s) provides that "[t]he prevailing party in an action brought pursuant to this section may be awarded court costs and attorney's fees, if any."

FACTUAL AND PROCEDURAL BACKGROUND

I. Felarca's Petition and the TRO

On September 7, 2017, Felarca filed a request for a civil harassment restraining order to protect herself from Worden, using a form issued by the Judicial Council of California. On a section of the form asking for a description of the harassment, Felarca stated that Worden harassed her once in February 2017 and three times in August 2017, and she identified friends who were present when the alleged harassment occurred. She gave an affirmative response to a question asking if she was "harmed or injured because of the harassment," providing the following explanation: "Since February 2017 forward, I have received hundreds of rape threats and death threats for my political views. Troy Worden has been personally stalking and involving others in stalking me, and threatening me with violence, causing me acute anxiety and making me fear for my safety."

An attachment to Felarca's request for a restraining order states that she is "a Filipina American female" being stalked and intimidated by a "white male" U.C. Berkeley student because of her "political views opposing Donald Trump." The attachment describes four encounters with Worden in 2017 at the U.C. Berkeley campus. In February, Worden approached Felarca in Sproul Plaza and said he had heard about her "in the news" and that he admired and respected her. Felarca agreed to be in a "selfie" with Worden, but after he took the photo he tried to touch her face. Alarmed by his "hard, chilling, menacing expression," Felarca "pulled back sharply." Worden walked away, but Felarca was unsettled by the interaction.

Felarca alleges that approximately six months later, on the afternoon of August 21, Worden "stalked" her for almost two hours while she was at a table passing out flyers in Sproul Plaza. Worden and his friend repeatedly walked by her table, stopped near her and stared at her, but then separated when she tried to use her phone to take their picture. When she packed up to leave, she noticed Worden had gathered a group of friends, which included another person who allegedly stalked Felarca in the past. The group stared at her and called her names when she "kept walking by" them, which made her feel threatened and unsafe.

Two days later, on August 23, Worden and a group of male friends tried to enter a room on campus where Felarca was holding a "political planning meeting." Felarca told them to leave her alone because she did not feel safe, but they refused. Felarca alleges Worden repeatedly called her by name, stared at her in a threatening manner, and yelled 'the following threats: "You're going to get what's coming to you"; "We're going to get you"; and "I'm going to punch YOU." The incident made Felarca afraid for her safety and the safety of her friends.

Finally, Felarca alleges that on the evening of August 28, she was holding a meeting on the steps of Sproul Hall when Worden and his friend stopped and stood across from the meeting and repeatedly called her by name. She put up her hand, said she did not want to talk to them and asked them to leave. Instead, they stood approximately 15 feet away, and "periodically star[ed]" at her in a "threatening manner for approximately 20 to 30 minutes."

In her request for a civil harassment restraining order, Felarca sought a TRO without notice to Worden, stating: "Worden's stalking and harassment have increased in frequency and I fear that he will harm me." The court granted the TRO, which required Worden to stay 100 yards away from Felarca, her home, workplace and school. On September 11, an associate of Felarca served a copy of the restraining order on Worden.

II. The Hearing on Felarca's Petition

On September 28, 2017, Commissioner Thomas Rasch held a hearing on Felarca's petition. Felarca had four witnesses and Worden had six. Felarca presented her case, but there was insufficient time to hear Worden's witnesses that day.

Felarca testified that she is an alumna of U.C. Berkeley and has been politically active on campus for over 20 years. She is the Northern California coordinator for "The Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality by any Means Necessary," which is commonly referred to as "BAMN." In that role, Felarca sits at a table or hands out flyers in Sproul Plaza several times a week.

Felarca did not testify about the allegation in her petition that she has received "hundreds of rape threats and death threats" or accuse Worden of making such a threat

against her. She did testify about four encounters with Worden as outlined in her petition. In her direct testimony, Felarca stated that she did not know Worden before February 2017 when he tricked her into taking a "selfie," but he was so disturbing that she recognized him when she saw him again in August. At some point after their second encounter, Felarca saw a picture of Worden at Sproul Plaza, which is how she learned his name. She subsequently learned that he was a member of the Berkeley College Republicans. Later, when Worden and his group refused to leave Felarca's planning meeting, she contacted the police who suggested she file a restraining order. A few days later, Felarca was giving a press conference at Sproul Plaza and Worden kept pointing at her and staring at her in a menacing matter, which cemented her decision to seek a restraining order.

Under cross-examination, Felarca testified that the purpose of BAMN's August 23 planning meeting was to organize a protest of "white supremacists and alt rightists that were coming to Berkeley." She and other BAMN members would not let Worden and other Berkeley Young Republicans into the classroom where the meeting was being held. Felarca explained, "I didn't feel safe, and so I did not want them to come in." When the police came, they told Felarca she could not prevent the Young Republicans from attending. So, she cancelled the meeting and BAMN members stood outside and chanted until Worden and his friends left. Then Felarca conducted her meeting outside.

Three members of BAMN testified that Felarca told them about her first encounter with Worden and how frightened she was because of it. They also testified about one or more of the August 2017 incidents alleged in the petition. None of these witnesses were students at U.C. Berkeley, but one testified that BAMN is a registered student organization.

Two witnesses, Mark Airgood and Caroline Wong, testified that Worden distinguished himself as a leader of the group that attempted to enter the August 23 BAMN organizing meeting. Airgood, who blocked people from entering the meeting, specifically recalled hearing Worden make the three threatening statements Felarca

alleged in her petition. Caroline Wong heard Worden say he was going to "get" Felarca, but she did not hear him say he was going to "punch" her.

Felarca's third witness, Maricruz Lopez, was the person who served Worden with the TRO. Lopez testified that Worden was one of the people who tried to push their way into BAMN's August 23 meeting, although she did not know his name at the time. Lopez recalled Worden being at the front of the group and constantly saying Felarca's first name "in a really kind of like singsongy, mocking kind of voice." She subsequently learned Worden's name on September 11, when Felarca pointed him out to her at Sproul Plaza so that she could serve him with the TRO. Lopez testified that she laid it at his feet, he said thank you, picked it up and walked away. But approximately 30 minutes later he and a friend came back and "immediately started to harass and intimidate" Felarca by staring at her, asking why she would not talk to them and using their phones to take video. Worden finally left after campus police arrived and told him he would go to jail if he violated the restraining order again. Under cross-examination, Lopez acknowledged that before police were called on September 11, Worden said that he did not know if the TRO was real and he wanted the police to come so they could all " 'figure this out.' "

At the September 28 hearing, Felarca's counsel stated that she wanted to introduce evidence of a video that Lopez took on her phone during the September 11 incident but she had not shared it with opposing counsel. Worden's counsel advised the court they wanted to present more than 20 hours of video. The parties stipulated that they would agree on what to show the court and that the court would review it before the next hearing session.

After the court and parties agreed the hearing would be continued to October 13, 2017, Worden's counsel objected to keeping the TRO in effect until the next hearing, pointing out that Sproul Plaza is a designated free speech zone where students are "allowed to table," and a popular meeting place for university students like Worden. Over Felarca's objection, the court modified the TRO by reducing the distance Worden had to stay away from Felarca to 10 feet.

III. Dismissal of the Petition

On October 6, 2017, Felarca filed an ex parte request to postpone the continued hearing until October 26, which did not provide a reason for the request. On October 12, Worden filed an ex parte application to return the hearing date to October 13 or alternatively to cancel the TRO. Worden stated that Felarca failed to provide required notice of her request for a continuance and that granting it would leave the TRO in effect for 50 days, which was not permissible under the statute. Worden also filed his video evidence and transcripts with the court. The court granted Felarca's request to postpone the hearing and Worden's request to terminate the TRO, "effective immediately."

On the morning of the October 26 hearing date, Felarca filed a request for dismissal of her action against Worden without prejudice. The request included a waiver of costs and acknowledgement that Felarca was "not recovering anything of value by this action." A few hours before the October 26 hearing was scheduled to begin, Felarca's counsel sent Warden's counsel an email indicating that the case was dismissed. Warden appeared at the hearing as scheduled, with his counsel and witnesses.

IV. Worden's Motions for Attorney's Fees and Costs

On November 21, 2017, Worden filed two motions: a motion for an award of attorney's fees and costs as the prevailing party, pursuant to sections 527.6, subdivision (s), and 1032; and a motion to impose sanctions on Felarca under section 128.5 for filing a frivolous action, which also sought attorney's fees and costs.

Worden requested attorney's fees totaling $178,556.25, which he calculated using a lodestar method.[2] This calculation consisted of $113,037.50 for work performed by Worden's litigation team at the Dhillon Law Group (DLG), plus $6,000 for anticipated work on the attorney's fee motion, enhanced by a multiplier of 1.5, to compensate DLG

[2] Worden requested different dollar amounts in his two motions. His section 526.7 motion requested $178,556.25 in attorney's fees and $2,457.38 in costs, which totals $181,013.63. His sanctions motion requested that Felarca pay $181,016.73, without specifying an amount attributable to attorney's fees.

for the risk that it would not be able to recover fees from a client who was a college student.

The services that DLG rendered to Worden were itemized in an "invoice" produced in support of the fee request. The invoice bears an issue date of November 20, 2017, but includes charges for work performed on November 21. The invoice itemizes services by date, the initials of a service provider, time spent and charged, and a description of the work performed. However, all of the work descriptions are redacted. Thus, it is not possible to determine what work was performed or how much was charged for any given task. The invoice does reflect a total fee for attorney services of $113,037.50.

DLG's managing partner Harmeet Dhillon submitted a declaration in support of Worden's motions. Dhillon stated that Worden retained DLG because when Felarca filed this action Dhillon was already representing the Berkeley College Republicans in a case against the University involving free speech issues. Dhillon opined that her prior knowledge of the pertinent facts and extensive legal experience positioned her to ensure that Worden's case was managed efficiently. Moreover, DLG minimized costs by delegating legal research, investigation and motion drafting to Mark Mueser, an experienced attorney whose billing rate was much lower than Dhillon's.

Dhillon stated that she did 41 hours of "tasks" on Worden's case, which included corresponding with the client and meeting with members of the DLG team, and she opined that her standard billing rate of $700 per hour was reasonable compensation for this work. As the managing partner of the firm and the case supervisor, Dhillon also attested to the reasonableness of 3.1 hours of legal research by a junior attorney with a billing rate of $325 per hour, and 118.6 hours of work performed by paralegals and clerks with a billing rate of $150 per hour.

Mark Mueser also submitted a declaration attesting to the reasonableness of DLG's fees. Mueser stated that he spent a total of 131.5 hours doing work for the case, which included interviewing witnesses, reviewing video and preparing an anti-SLAPP motion, and he opined that his standard billing rate of $500 was reasonable compensation

for his work. Mueser stated that DLG's original strategy was to file an anti-SLAPP motion, but once he learned Felarca had a "criminal record for violence and [a] civil record for filing restraining orders," he decided to challenge the TRO on the merits. Preparing for the hearing required extensive time by the team and, Mueser opined, "the hours spent on this case [were] entirely reasonable given the amount of work that was required."

In addition, Worden filed a declaration in which he disputed Felarca's allegations. Worden stated that he did not ask Felarca to take a selfie with him on February 17, or ever. He submitted a letter from his employer, which indicated that he was at work when the February 17 incident with Felarca allegedly occurred. Worden acknowledged seeing Felarca on the three occasions in August. By that time, he was president of the Berkeley Young Republicans and he was familiar with Felarca and her politics. It was his understanding that BAMN had produced posters of him, which labeled him a " 'baby fascist,' " and that Felarca advocated beating up fascists as acts of self-defense. Worden stated that on August 21, he took a photo of Felarca and posted it to his Facebook with a comment that she was out on bail. He attended the August 23 meeting because BAMN was intending to shut down an event planned by the Young Republicans featuring Ben Shapiro. Worden denied threatening Felarca at that meeting, relying on video evidence previously filed with the court. Worden also denied interacting with Felarca on August 28, but he acknowledged taking a photo of her and posting it on Facebook, along with a comment that she took part in a riot and attacked some of his conservative friends.

In his declaration, Worden argued that Felarca's TRO caused him damage for the following reasons: he had to retain counsel, who he had not been able to pay despite setting up a fund to help him pay these fees; the order requiring him to stay 100 yards away from Felarca when she was at Sproul Plaza impaired his First Amendment rights and his rights as a university student; and the TRO affected his Second Amendment rights because he was not able to possess any guns while it was in effect.

V. The Trial Court's Order

On January 4, 2018, the court held a hearing on Worden's motions for fees and sanctions. At the conclusion of the hearing, the court adopted tentative rulings to grant in part the motion for attorney's fees and costs and deny the motion for sanctions. On January 10, the court filed a 9-page amended order "to explain its thinking more fully," which did not change the result of the January 4 order.

First, the court explained why it exercised its discretion under section 527.6 to award fees to Worden as the prevailing party. The most important consideration for the court was to ensure that petitioners and respondents have access to courts in civil harassment cases. The court observed that attorney's fee awards are rare in this context due to concern that a party will be stifled by a fear of having to pay the other side's fees or encouraged to resolve a case based on a waiver of fees. Nevertheless, the court found that a fee award was appropriate in this case because the evidence established that Felarca's case "objectively lacked substantial justification," politics was at least a partial motivation underlying her decision to bring the case, and she "unreasonably prolonged or complicated the case."

Second, the court explained why it declined to award Worden the amount of fees and costs that he requested. The court found that the amounts requested were unreasonable and inflated. The time spent by counsel "dramatically" exceeded the reasonable amount of time to spend on a civil harassment matter, and the asserted fee rates were also unreasonably high for this type of work. Based on these conclusions, the court exercised its discretion to find that Worden was entitled to an award of fees in the amount of $10,000 and costs in the amount of $1,100.

Third, the court explained that it was denying the motion for sanctions because Worden had "not demonstrated that this case was so devoid of merit that the filing and prosecution of the case should result in sanctions under CCP 128.5."

DISCUSSION

Felarca contends the trial court erred by concluding that Worden is the prevailing party in this case and Worden contends that the court erred by awarding him only

$10,000 in attorney's fees. "[T]he decision whether to award attorney fees to a prevailing party" under section 527.6 "is a matter committed to the discretion of the trial court." (*Krug v. Maschmeier* (2009) 172 Cal.App.4th 796, 802.) Despite both parties' attempt to avoid this deferential standard of review by framing their arguments as hinging on questions of law, we conclude that the attorney's fees order was a proper exercise of the trial court's discretion under section 527.6, and we decline to disturb it.

I. Felarca's Appeal

Felarca contends the trial court erred by failing to apply the governing legal standard for determining the prevailing party under section 527.6, subdivision (s). According to Felarca, the party who achieved its litigation objective is necessarily the prevailing party in a civil harassment case and, in this case, she achieved her litigation objective by stopping Worden's harassment.

Because section 527.6 does not define "prevailing party," courts have used the general definition of the term that is codified in section 1032 to elucidate its meaning in section 527.6. (*Adler v. Vaicius* (1993) 21 Cal.App.4th 1770, 1777; *Elster v. Friedman* (1989) 211 Cal.App.3d 1439, 1443.) Section 1032, subdivision (a)(4) states:
" 'Prevailing party' includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant." In this case, neither party obtained a net monetary recovery, a dismissal was entered in favor of Worden, and Felarca did not recover any relief against Worden. Accordingly, Worden fits the section 1032 definition of a prevailing party while Felarca does not.

Felarca argues that the section 1032 definition is not determinative in civil harassment cases that are voluntarily dismissed prior to disposition. In this context, she argues, the court is *required* to base its prevailing party decision on a pragmatic assessment of which party obtained their litigation objective. As support for this argument, Felarca relies on *Santisas v.Goodin* (1998) 17 Cal.4th 599 (*Santisas*).

In *Santisas*, the Supreme Court considered whether an award of attorney's fees pursuant to a fee provision in a sales contract was barred by Civil Code section 1717 when the case had been voluntarily dismissed prior to trial. (*Santisas, supra,* 17 Cal.4th at p. 602.) This issue arose because section 1717, which authorizes contractual attorney's fee awards, states that there " 'shall' " be no prevailing party on the contract when an action has been voluntarily dismissed or dismissed pursuant to a settlement. The *Santisas* court held that in "voluntary pretrial dismissal cases," section 1717 bars recovery of attorney's fees incurred to defend a contract claim but does not bar recovery of fees incurred to defend a noncontract claim. For noncontract claims, the court found, the terms of the contractual attorney's fee provision dictate whether fees are recoverable after a pretrial dismissal of the case. (*Id.* at p. 602.) If the contract does not define " 'prevailing party' " or expressly authorize a fee recovery in the event of a dismissal, the "court may base its attorney fees decision on a pragmatic definition of the extent to which each party has realized its litigation objectives, whether by judgment, settlement, or otherwise." (*Id*. at p. 632.)

Some appellate courts have employed the *Santisas* court's "pragmatic" approach to resolve attorney's fee disputes arising under fee-shifting statutes that provide for recovery of fees by the prevailing party without defining that term. (*Wohlgemuth v. Caterpillar Inc.* (2012) 207 Cal.App.4th 1252, 1264 [collecting cases].) But we have not found any case decided under section 527.6 that requires—or even uses—this criterion to determine the prevailing party in a civil harassment case.

Moreover, the pragmatic approach is wholly consistent with the trial court's order. The record demonstrates that Worden achieved several litigation objectives: he obtained a favorable modification of the TRO after the court heard Felarca's evidence; his request to terminate the TRO was granted prior to the continued hearing; and he secured a dismissal of the entire action without having to present any evidence. Under these circumstances, the trial court could make the pragmatic assessment that Worden is the prevailing party in this case.

Felarca takes the position that she is the prevailing party as a matter of law because she achieved her litigation objective of stopping Worden's harassment. The premise of this argument is that Warden was harassing her in the first instance. However, Worden disputed Felarca's allegations, and Felarca voluntarily dismissed her case before the evidentiary hearing could be completed. Thus, Felarca failed to prove that Worden harassed her. Implicitly acknowledging this fact in her Reply Brief, Felarca argues that to decide the attorney's fees motion, the court was required to take additional testimony on the merits of the dismissed case. We find nothing "pragmatic" about this approach to deciding the motion and reject Felarca's new theory, which she presents without any authority.

Felarca posits that her voluntary dismissal does not diminish what she achieved because Worden's compliance with the TRO made it unnecessary for her to obtain an injunction. A similar argument was rejected in *Adler, supra,* 21 Cal.App.4th 1770. The *Adler* plaintiff filed a petition to enjoin a police officer from harassing her and obtained a TRO pursuant to allegations that the police department initiated a formal investigation of the officer after plaintiff made a report accusing him of sexual battery. In a response to the petition, the officer stated that he recalled detaining plaintiff and others who were attempting to remove a street sign, and that he recognized plaintiff as a waitress from a local establishment who had dated other police officers, but he had no other dealings with her. On the scheduled hearing date, a judge was not available, and plaintiff would not accept a temporary judge, so the hearing was re-set. In the interim, the officer served plaintiff with discovery and she dismissed the case with prejudice. Thereafter, the court awarded the officer $975 in attorney's fees. (*Id*. at p. 1774.)

On appeal, the *Adler* plaintiff argued she was the prevailing party because "she achieved what she wanted by obtaining the TRO since it was unlikely respondent would bother her after she filed her complaint with the police department." (*Alder*, *supra,* 21 Cal.App.4th at p. 1774.) The court observed that although section 527.6 provides for expedited injunctive relief to victims of harassment, it also extends important due process safeguards to the party to be enjoined, including the opportunity to present his or her case

to a judge, who is required to receive all relevant evidence and to issue an injunction only upon clear and convincing evidence of harassment as defined by statute and case law. The *Adler* court refused to "turn these safeguards on their head" by accepting plaintiff's theory that "a person could obtain a TRO ex parte and then, prior to hearing on the injunction, dismiss the proceedings and claim attorney fees as [the] prevailing party before the restrained party had the opportunity for a hearing on the merits." (*Id*. at p. 1775.) We agree with *Adler* and follow it here in concluding that Felarca did not become the prevailing party by obtaining a TRO based on allegations that she ultimately did not prove.

Taking a different tack, Felarca contends that the finding that Worden is the prevailing party is not supported by the record because the court refused to "acknowledge that women who are political leaders can be stalked by political opponents." There are two parts to this lengthy argument. First, Felarca faults the court for ignoring her evidence that Worden's conduct fell "squarely" within section 527.6's definition of harassment and stalking. Second, Felarca accuses the court of explicitly refusing to extend the protection of the civil harassment law "to women who are political leaders." Neither of these things happened.

Because Felarca dismissed her petition before all relevant evidence could be presented, the trial court did not make a substantive ruling on the merits of her harassment claim. Nor will we. Instead, the question is whether the trial court abused its discretion by awarding attorney's fees to Worden. As discussed, the record supports the court's finding that Worden was the prevailing party. Despite that finding, the court was concerned about awarding attorney's fees in a civil harassment proceeding because it did not want to discourage parties from accessing the courts to resolve such matters. Nevertheless, the court exercised its discretion to make an award in this case because it concluded, having heard Felarca's evidence, that in this case Felarca: (1) made allegations that lacked "substantial justification"; (2) had a political motive; and (3) took actions that unreasonably prolonged the proceedings. All three of these considerations find support in the record.

First, the trial court reasonably concluded that some of Felarca's most serious allegations lacked substantial justification. Felarca alleged under penalty of perjury that she was injured by Worden's harassment because "[s]ince February 2017 forward" she had received hundreds of rape and murder threats due to her political views, and Worden had been harassing and stalking her. As the trial court observed, the juxtaposition of these two allegations implied they were connected and likely generated sufficient concern to warrant the TRO. However, Felarca did not present any evidence that Worden either made or participated in making any rape threats or death threats. As to the more detailed allegations in Felarca's application, the trial court found that testimony by Felarca and her witnesses regarding the alleged harassment was not "corroborated" by the video evidence. Instead, "[t]he video was consistent with [Worden's] assertion that there had been no harassment at the videotaped events." While several of the videotaped events appear completely unrelated to this case, one segment documents at length the August 23 political planning meeting that was featured in Felarca's request for a restraining order. Having reviewed this video segment along with the transcript of the hearing testimony, we cannot say that the trial court abused its discretion by concluding that Felarca made material allegations without substantial justification.

We note that Felarca's video evidence also corroborates testimony that after Worden was served with the TRO he blatantly violated it, standing within 100 yards of Felarca filming her on his cell phone as she argued with his political fellow-traveler in Sproul Plaza. This refusal to follow a court order was a serious mistake on Worden's part, but it does not establish that the trial court abused its discretion in finding that Felarca lacked substantial justification for allegations in her petition.

Second, the trial court's finding that Felarca had a political motivation for bringing this action was also based on the video evidence. The court found that this "evidence demonstrated that respondent Worden and petitioner Felarca have different political views and that they interacted at various difficult incidents, but did not demonstrate harassment within the meaning of CCP section 527.6(b)(3). Although the underlying facts unfolded in the same time period as political tension and violence in Berkeley and

in the country, the facts in this case objectively did not support Felarca's claim that Worden harassed her." This interpretation of the evidence was not unreasonable, and it should go without saying that it in no way deprives political leaders with legitimate claims of the protection of the civil harassment law.

Finally, there is evidence that Felarca prolonged and complicated this proceeding. After agreeing to the continued hearing date, she filed an ex parte application to postpone the continued hearing without giving a reason or proper notice to Worden. Then, on the morning of the continued hearing date, she dismissed the entire action without giving Worden timely notice of the dismissal.

Disputing the trial court's finding that she prolonged the proceeding, Felarca contends that she notified Worden that this case was dismissed on October 25 and then sent him notice of the dismissal on the morning of October 26, but his team decided to appear at the hearing even though they knew it had been cancelled. We are not persuaded by these contentions.

The record shows that between October 21 and October 24, the attorneys exchanged several emails fully anticipating a hearing on the merits of the petition. Then on October 25 at 11:04 a.m., Felarca's counsel sent Worden's counsel this message by email: "You had represented that we would have a hearing on October 26 if we do not stipulate to a date. However, there appears to have been a hearing on October 23, and neither party appeared. As a result, the judge dismissed the case (See attached order). [¶] We do not intend to take further action at this time. We will inform you if we do." Worden's counsel replied at 11:25 a.m. that the attached order was from a different case, that the court's docket reflected the hearing in this case was still set for October 26, and that "[w]e will be appearing at that time." Almost 24 hours later and just two and a half hours before the scheduled hearing, Felarca's counsel finally replied that Felarca had dismissed the case that morning, so the hearing would automatically be vacated. Although Warden's counsel included his phone number in his email, he received no telephone call to disclose this late-breaking development.

The October 25-26 emails are consistent with the court's finding that Felarca prolonged this case, confirming that after Felarca secured a continuance without showing good cause, she dismissed the action hours before Worden would have had the opportunity to present his case. By this time, Worden's counsel (as well as the trial court) would have put considerable effort into preparing for the hearing. The October 25 email from Felarca's counsel was not notice of her intent to dismiss *this* case, and the October 26 email sent just before the hearing does not prove that Worden knew the case had been dismissed. It does indicate that Felarca waited until the very last moment to dismiss her case and then made only a minimal effort to notify Worden of the dismissal prior to the hearing.

The amended attorney's fees order shows that the court was cognizant of the relevant factors and considered pertinent facts when exercising its discretion to award attorney's fees and costs under section 527.6. Felarca has failed to demonstrate the court abused its discretion by concluding that Worden was entitled to a fee award as the prevailing party in this case. We note finally that Felarca has made no effort to challenge the amount of fees awarded so, having concluded that an award of some kind was within the trial court's discretion, we turn now to Worden's challenge to the size of that award.[3]

[3] In her reply brief, Felarca argues that the trial court lacked jurisdiction to award costs to Worden because his motion was untimely under rule 3.1700 of the California Rules of Court. Felarca forfeited this claim of error by making it for the first time in her reply brief. (2 Eisenberg et al., Cal. Practice Guide: Civil Appeals & Writs (The Rutter Group 2017) ¶ 9:78.2, p. 9-27.) Moreover, the argument fails on the merits. Rule 3.1700 states: "A prevailing party who claims costs must serve and file a memorandum of costs within 15 days after the date of service of the notice of entry of judgment or dismissal by the clerk under Code of Civil Procedure section 664.5 or the date of service of written notice of entry of judgment or dismissal, or within 180 days after entry of judgment, whichever is first." Felarca's counsel's October 26 email does not constitute service of written notice of entry of judgment or dismissal. (See § 1010.6, subd. (a)(2)(A)(i) [in cases filed before December 31, 2018, electronic service of a document is not authorized unless the opposing party has expressly consented to receive electronic service].)

II. Worden's Appeal

Worden contends that the trial court committed an error of law by failing to apply the lodestar method for calculating the amount of his recoverable attorney's fees. According to Worden, the court "correctly found that he was entitled to attorney fees pursuant to . . . sections 128.5 and 1032," but then committed a reversible legal error by rejecting DLG's lodestar calculation in favor a flat fee of $10,000.

The trial court *denied* Worden's motion for sanctions under section 128.5, thus it clearly did not conclude that he was entitled to fees under that statute. Furthermore, the trial court did not award Worden attorney's fees under section 1032, nor could it have. Section 1032, subdivision (b) states: "Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding." By its plain language, section 1032 does not apply when another statute authorizes the award of costs or attorney fees in the case and provides they are not recoverable as a matter of right. (See *Williams v. Chino Valley Independent Fire Dist.* (2015) 61 Cal.4th 97, 105 [Govt. Code § 12965, subd. (d) under which cost awards are "discretionary rather than mandatory" is an express exception to section 1032, subd. (b)].) Because section 527.6, subdivision (s) vests the trial court with discretion to award attorney's fees and costs (*Krug v. Maschmeier*, *supra*, 172 Cal.App.4th at p. 802), section 1032 does not apply in civil harassment proceedings. [4]

Thus, contrary to the premise of Worden's appellate arguments, section 527.6, subdivision (s) is the *sole* basis for the attorney's fee award in this case. Worden cites no

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[4] Felarca too relies on this inapplicable statute, albeit in a footnote. She contends that the $1,100 costs award is erroneous because the bill of costs submitted by Worden does not include *any* item that is allowable as a cost under section 1033.5. Section 1033.5 lists items allowable as costs under section 1032, which, as discussed, pertains to the recovery of costs "as a matter of right." Here, the court awarded costs under section 527.6, which confers discretion to award "court costs" without restricting the award to specified items. Although the court did not specify what items it awarded as costs, we note that Worden's costs bill includes two court costs that total $1,100: a $435.00 payment for an "Initial appearance filing fee"; and a $665.00 payment for a "Transcript fee."

authority requiring the court to use a lodestar method for calculating attorney's fees awarded under this civil harassment statute. Instead, he contends that the lodestar method must always be used to calculate a fee award unless the Legislature expressly states that a different method applies, citing *Chacon v. Litke* (2010) 181 Cal.App.4th 1234, 1259 (*Chacon*).

Chacon, supra, 181 Cal.App.4th 1259, was an appeal from a wrongful eviction judgment awarding plaintiffs damages and attorney's fees under the San Francisco Residential Rent Stabilization and Arbitration Ordinance (Ordinance). The fees were granted pursuant to a provision in the Ordinance that stated: " 'The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to order of the court.' " (*Id*. at p. 1259.) The appellant argued that the trial court erred by using the lodestar method to calculate a reasonable fee. Rejecting this claim, the *Chacon* court pointed out that in *Ketchum v. Moses* (2001) 24 Cal.4th 1122 (*Ketchum*), the Supreme court approved the lodestar method for calculating fees under the anti-SLAPP statute. (*Chacon, supra*, at p. 1259.) Since the Ordinance's fee-shifting provision was similar to the anti-SLAPP statute, the *Chacon* court "presume[d] the board of supervisors, in adopting the fee-shifting provision, intended courts to use the lodestar adjustment method." (*Id*. at pp. 1259–1260.)

Chacon involved a mandatory fee-shifting provision which, like the anti-SLAPP statute, affords prevailing parties the right to recover "reasonable" attorney's fees. The lodestar method is an approved method for calculating a reasonable fee. (*Ketchum, supra*, 24 Cal.4th at p. 1134–1136; *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095–1096.) However, section 527.6, subdivision (s) is not a mandatory fee provision; it does not confer a right to recover reasonable fees or any fees at all. Instead, the court has discretion to award fees and costs, "if any." (§ 527.6, subd. (s).) Worden cites no statute, case or policy for restricting judicial discretion under this civil harassment statute by requiring the court to justify its ruling with a lodestar analysis.

Moreover, contrary to Worden's position on appeal, the trial court expressly stated that it used the "Lodestar/multiplier approach regarding the amount of fees." It then

made express findings that (1) the amount of time DLG spent on this case "dramatically exceed[ed]" a reasonable amount of time; (2) the asserted hourly rates "exceed the reasonable rates for work on Civil Harassment cases"; and (3) the fee request submitted by DLG was "excessive" and "unreasonably inflated." Then, applying the principle that an inflated fee request can be reduced or denied, the court exercised its discretion to award attorney's fees in the total amount of $10,000 and $1,100 in costs.[5]

Worden contends that the trial court committed reversible legal error because it skipped the first step of the lodestar approach, which required it to calculate a reasonable fee for DLG's work in this case. According to this argument, the court was not permitted to reject out-of-hand DLG's evidence that $113,037.50 was a reasonable fee for work actually performed on this case, and then simply pull the $10,000 figure out of thin air. As authority for this argument, Worden relies on *Save Our Uniquely Rural Community Environment v. County of San Bernardino* (2015) 235 Cal.App.4th 1179 (*SOURCE*).

SOURCE was a CEQA case in which the successful plaintiff sought an award of attorney's fees under section 1021.5, California's private attorney general statute. (*SOURCE, supra,* 235 Cal.App.4th 1179.) Notably, fee awards are discretionary under that statute as they are here. The *SOURCE* trial court awarded fees totaling $19,176 despite the fact that plaintiff's counsel requested $231,098. (*Id.* at p. 1182.) On appeal, plaintiff argued that the trial court failed to apply the lodestar method "at all" because it did not specify an hourly amount that it found reasonable and there was no discernible mathematical basis for reducing the fee request by 80 percent and awarding an amount that was " 'snatched whimsically from thin air.' " (*Id.* at p. 1189.) Rejecting this claim of error, the SOURCE court applied settled principles that the trial court is not required to "engage in any explicit analysis on the record" or issue a statement of decision in support of an attorney's fees order. (*Id.* at p. 1189.)

[5] The trial court separately articulated another policy consideration that could have supported its decision to reduce the fees awarded in this case, namely its desire not to discourage potential victims from accessing the courts to resolve civil harassment matters.

Thus, *SOURCE* explicitly rejects the same argument Worden advances in this appeal. *SOURCE* is also inconsistent with Worden's secondary argument that he is entitled to a presumption that his fee request was reasonable. The *SOURCE* court emphasized the heavy burden placed on an appellant challenging a discretionary fee award, which requires proof that the court erred by awarding less than the amount sought. (*SOURCE*, *supra*, 235 Cal.App.4th at p. 1184.) To meet his burden of establishing that his fee request was not excessive, Worden must "affirmatively demonstrate" that the hours spent were reasonable and necessary. (*Id*. at p. 1186.) He has not carried this burden here. DLG's redacted invoice makes it impossible to determine how much time they spent on any given task or what those tasks actually were. Indeed, there is nothing about this invoice to show that the work was performed for the Felarca civil harassment matter rather than the free speech case that DLG was also handling for Worden. Because Worden did not carry his initial burden of demonstrating that the hours DLG spent were reasonable and necessary to oppose the harassment petition, the court acted well within its discretion by reducing the fee award.

Worden insists that the trial court committed reversible error by failing to provide a more specific explanation for how it reached the $10,000 figure. But the complex cases upon which he relies are inapposite for many reasons. (*Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44 (*Gorman*) and *Kerkeles v. City of San Jose* (2015) 243 Cal.App.4th 88, 102 (*Kerkeles*).) The crucial distinction for our purposes is that in both *Gorman* and *Kerkeles*, the party seeking attorney's fees submitted billing statements that described the specific tasks performed, and the fees sought for those tasks. (See e.g., *Gorman*, *supra*, at pp. 90–91; *Kerkeles*, *supra*, pp. 94–95.) That detailed information made it possible for the courts in those cases to be more specific about what services were reasonable and the value of those services. Worden did not provide such information in the present case.

Moreover, in this case, the court made an express finding that DLG's fee request was inflated. " 'A fee request that appears unreasonably inflated is a special circumstance permitting the trial court to reduce the award or deny one altogether.' "

(*Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 990.) Here, DLG claimed that it incurred $113,037.50 in attorney's fees for performing 175.6 hours of attorney work and 118.6 hours of paralegal/law clerk work. However, Worden made the conscious decision to withhold from the court the descriptions of the work that DLG used to justify billing these hours. Under these circumstances the court was well within its discretion in concluding that DLG's fees were unreasonably inflated for an expedited civil harassment matter. "This fact alone was sufficient, in the trial court's discretion, to justify denying attorney fees altogether." (*Chavez* at p. 991.) The court nevertheless exercised its discretion to award $10,000. If the failure to articulate a formula justifying this amount was error, Worden invited that error and benefited from it because a reasonable alternative would have been to deny the award altogether.

DISPOSITION

The attorney's fees order is affirmed. The parties are to bear their own costs on appeal.

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TUCHER, J.

WE CONCUR:

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POLLAK, P. J.

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BROWN, J.